

GTE proposes that, in order to demonstrate the competitors' ability to supply, a LEC should show that customers representing 25 percent of the LEC's demand in the relevant market is addressable.⁸⁴ Alternatively, the LEC could choose to base its showing on the total demand in the market, and not just its own. While this alternative would require the LEC to estimate its competitors' demand, it would provide a useful option for LECs in markets where much of the addressable demand has already been lost to a competitor.

A system of streamlining based on addressability would provide strong protection against the possible anticompetitive behaviors discussed in the *Second Notice*.⁸⁵ A LEC market would be streamlined only when a significant portion of the market had been shown to have competitive alternatives available. This would ensure that customers in these markets would be protected against unreasonable rate increases. Because the showing would be based on the presence of facilities-based competitors, the Commission could ensure that the

competitor has made between placing facilities in advance, and extending facilities, in order to meet demand in its serving area.

⁸⁴ In this analysis, the numerator would be the demand of customers within the subset of the relevant market that lies within the competitive "footprint." The denominator would be the LEC's total demand for the relevant market. If the demand is measured in different units, a suitable common measure could be used, such as DS-1 equivalents. LECs should also be able to use a proxy for demand, such as relative lines or land area, since these will tend to produce conservative estimates.

⁸⁵ For a more detailed discussion of these points, see GTE's Comments, CC Docket No. 94-1, filed May 9, 1994, Attachment A, *Regulatory Reform for Local Exchange Carriers: Competition through Regulatory Symmetry*, by Dr. Mark Schankerman. ("Schankerman")

LEC would find predation to be an unprofitable strategy. Even if it priced below cost, the LEC could not drive out the facilities that had already been placed. Similarly, this approach would provide assurance that the LEC could not profitably engage in a vertical price squeeze, since the competitors would be able to reach a significant portion of the market using their own facilities.⁸⁶

2. The Commission should establish a criterion based on demand responsiveness.

In order to affect the elasticity of demand faced by the LEC, the alternative supply which the addressability standard measures must be for services which customers regard as substitutable for LEC services they are purchasing today. Therefore, a showing of demand responsiveness should consist of a demonstration that the alternative services are viewed as substitutes by consumers.

While GTE urges the Commission to adopt a simple, well-defined addressability standard for supply responsiveness, there does not appear to be an equivalent showing of demand responsiveness that the Commission can define in detail and in advance. Each LEC would have to assemble evidence to show that the services it uses in its addressability showing are acceptable to consumers. GTE believes that ample evidence on this point would be available.

⁸⁶ Further, since facilities would already be in-place throughout much of the area, any attempt at a price squeeze would simply encourage competitors to extend their own facilities more rapidly.

The access markets in question primarily involve wholesale services whose characteristics are well defined. Each new provider and relevant market showing will not be a new experience unrelated to any other.

In the case of AT&T, not only was the Commission plowing new ground, it was examining a single national market, so there was no other market which could be used as a point of reference. In contrast, each showing for an access market will be able to draw upon the experience of previous showings for other markets. For example, if business customers accept MFS's DS-3 service as a substitute for NYNEX's in New York, it is reasonable to believe that customers in Tampa will accept a CAP's DS-3 service as a substitute for GTE's. If residence customers accept Time Warner's local service as a substitute for BellSouth's in Atlanta, it is reasonable to believe that customers in other cities will also accept similar services from cable firms. It should not be necessary to gather new experience on these points in every relevant market.

3. The Commission should not adopt a standard based on market share.

The Commission should not use market share as one of its criteria. Such an approach would make the Commission's market power test inaccurate, and it would prevent the adaptive framework from achieving its goals.

First, as the *SFNPRM* observes (at ¶143), market share is not a determinant of market power. High market share "does not necessarily confer market power. A company that enjoys a very high market share will be

constrained from raising its prices above cost if the market is characterized by high supply and demand elasticities." (*id.*) GTE agrees with the Commission's assessment of market share. The analysis of market power should focus on supply and demand responsiveness, using the measures discussed *supra*.

Second, the use of market share as a trigger predetermines the outcome of the competitive process, effectively reserving a portion of the market for a new entrant. This would blunt the efficiency incentives the Commission seeks to create.⁸⁷ It could even create an incentive for the incumbent to lose customers to the entrant.⁸⁸ It would also prevent the adaptive framework from sending the appropriate pricing signals for entry and investment decisions, by both the incumbent and the potential entrants.

Third, market share reflects choices customers made in the past, rather than the choices they have available today. Thus, a market share approach will always build into the system a lag, during which entrants will be protected from the incumbent. Finally, attempting to gather data to support a market share determination would be extremely complex. The necessary reporting would be a burden on all parties, and the results of any feasible reporting system are likely to

⁸⁷ See *Schankerman* at 19-20.

⁸⁸ See Schmalensee, Richard, and William Taylor, *Pricing Flexibility for Interstate Carrier Access Services*, USTA's Comments in the instant proceeding, Attachment 1, p.25.

be inaccurate.⁸⁹ The reporting that would be required to support an addressability standard, in contrast, would be simple and minimally burdensome.

If the Commission includes market share as a possible indicator, uncertainty also will be introduced into a process which, in order to generate accurate expectations to guide decision-making, should be as predictable as possible. A LEC should know that it will be able to make a successful showing if it can meet the criteria for supply and demand elasticity. The Commission should make this point clear in any plan it adopts, even if it does expect to review available numbers on market share.

4. A competitive showing should not depend on evidence of below-cap pricing over time.

The *SFNPRM* seeks comment (at ¶145) as to whether the Commission should consider evidence that a LEC has priced below the price cap ceiling as evidence that the LEC's market should be streamlined. Even though GTE has priced below its cap to a greater extent than any other price cap LEC during the period the price cap plan has been in effect, GTE cannot support this criterion. Some information may be gleaned by examining below cap pricing, *e.g.*, if a LEC prices below its cap, it demonstrates that a market constraint is operating in such a way as to render the price cap constraint non-binding. However, there are two difficulties in making use of this information.

⁸⁹ See GTE's Comments in CCB-IAD 95-110, *Access Provider Survey*, filed December 11, 1995.

First, as the *SFNPRM* notes (*id.*), pricing at the cap does not necessarily indicate that a LEC has market power. The level of the PCI may be at or below the market price. Further, there are several features of the price cap plan that have served to inhibit rate reductions. Therefore, it would be inappropriate to condition streamlined regulation on evidence of below-cap pricing.

Second, and most importantly, the streamlining process must be as simple and predictable as possible. This will minimize administrative burdens and provide reasonable expectations for all market participants – LECs and competitors – so that they can predict with some accuracy whether a relevant market can pass the test.

As the *SFNPRM* suggests (*id.*), below-cap pricing over time may provide additional evidence of competitive pressure in markets with high demand and supply elasticities. However, GTE submits that there should be clear thresholds for the supply and demand evidence. If these are met, the market should be streamlined. If the rules are structured in this way, it is not clear what role any pricing evidence would play, except to confirm a finding that would be made anyway. In cases when the supply showing is just below the threshold, or when the demand evidence is not clear, it may be useful for the Commission to turn to the pricing evidence.

E. Relevant markets found to be competitive should be removed from price caps and subject to streamlined regulation.

The *SFNPRM* proposes (at ¶129) to apply streamlined regulation to relevant markets that meet the competitive criteria discussed *supra*. The rates for

services in these markets would be removed from price caps. Tariffs for such services would be presumed lawful, filed on 14 days' notice and without cost support.

GTE agrees that this treatment is appropriate. As the Commission notes (*id.*), it would retain its ability to review tariffs, to require cost support in specific cases, to reject tariffs that are unlawful and to investigate tariffs. In addition, the complaint process would remain in place as a way of evaluating abuses.

F. In markets subject to streamlined regulation, LECs should be permitted to offer services on a contract basis.

GTE agrees with the *SFNPRM* proposal (at ¶148) that a LEC should be permitted to offer contract prices for any access service in relevant markets that have been made subject to streamlined regulation. Contracts are widely used by other firms, including those with which the LECs must compete.⁹⁰ Contract carriage would increase the options available to consumers in streamlined markets, and would allow LECs to tailor service packages to meet customers' individual needs. The same terms would be available to any similarly situated customer in the same market. In any event, in markets shown to be competitive, LECs will lack the market power to maintain unreasonable differences in rates among customers.

By permitting LECs to offer contracts, the Commission would also encourage both LECs and other providers to compete more vigorously for

⁹⁰ See *SFNPRM* at n.226.

customers' business. If a LEC cannot provide contract tariffs, competitors will know in advance the LEC's best bid for any customer, since it will be the generally tariffed rate. Knowing the price they must beat, competitors will have no incentive to bid significantly below that level. By removing this asymmetry, the Commission can inject a healthy degree of uncertainty into the bidding process that will generate better prices for consumers.

GTE believes that the procedure suggested for filing contract-based tariffs under streamlined regulation is reasonable.⁹¹ However, GTE recommends that a LEC filing such a tariff should be able to protect proprietary LEC or customer information.

G. A LEC seeking streamlined treatment should file a proposed change to its market classification plan, supported by a competitive showing.

The *SFNPRM* seeks comment (at ¶151) on the appropriate procedure for implementing streamlined regulation in a given area. As markets are evaluated over time under the adaptive framework set forth in the *Second Notice*, there will be a need to maintain a record of which markets are subject to baseline, streamlined or nondominant treatment. This could be done by having each LEC maintain a market classification plan, in much the same way it maintains its zone pricing plans today. A filing to have a market declared competitive could then take the form of a revision

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SFNPRM at ¶150.

to the market classification plan, with the competitive showing as the support material for the filing. These should be filed on 30 days notice.⁹²

IV. THE COMMISSION SHOULD ESTABLISH A FRAMEWORK FOR DESIGNATING LECs AS NONDOMINANT WHEN THEY LACK MARKET POWER.

The *SFNPRM* seeks comment (at ¶154) as to whether the Commission should adopt rules in this proceeding that would define the conditions a LECs' service must meet in order to be considered nondominant. GTE urges the Commission to include nondominant treatment in its framework for many of the same reasons it supports the establishment of an adaptive framework for streamlined regulation.

In order to send efficient market signals to guide both incumbent LECs and potential market entrants in their investment and entry decisions, it is important for the Commission to establish, in advance, clear ground rules under which regulation will be determined. This will allow all market participants to base their decisions on reasonable expectations concerning what the Commission will do. Further, while the conditions supporting nondominance will of course be stricter than those for streamlining, the Commission should not prejudge whether any access market would meet those conditions in the near future.

⁹²

Once the change in classification has been approved, the LEC would make an administrative filing to reflect the change in its tariff.

As the *SFNPRM* notes (at ¶156), the Commission previously has applied the criteria established in the *Competitive Carrier* proceeding⁹³ to determine whether carriers should be considered nondominant. To date, nondominance has been determined in the domestic market as a whole. This determination has generally been made on a category basis, *e.g.*, resellers, DOMSATs, affiliates of Independent LECs, or market basis, *e.g.*, access, interexchange. However, AT&T was treated separately for interexchange service and was recently found to be nondominant.

In the *Fourth Competitive Carrier* decision, the Commission found that non-RBOC, *i.e.* Independent, LECs could provide interexchange services on a nondominant basis under certain conditions.⁹⁴ Thus, only access services provided by the LECs and certain interexchange services provided on a facilities basis by the LECs remain dominant. GTE strongly endorses proposals to

⁹³ *In the Matter of Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, First Report and Order, 85 F.C.C. 2d 1 (1980). (*subsequent citations omitted*)

⁹⁴ Domestic, interstate, interexchange resellers affiliated with independent exchange telephone companies were made subject to forbearance, while facilities-owning domestic, interstate interexchange carriers affiliated with Independent exchange telephone companies were placed under streamlined regulation. *In the Matter of Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, Fourth Report and Order, 95 F.C.C. 2d 554, 575 (1985). ("*Fourth Competitive Carrier*") No such finding was made with regard to the Regional Bell Companies ("RBOCs"). Some RBOCs have filed petitions requesting that they be found nondominant in certain markets under the *Competitive Carrier* criteria. See, *e.g.*, Ameritech Communications, Inc. Petition for Nondominant Status, filed July 21, 1995.

reclassify those LEC services which have not already been found to be nondominant which meet the *Competitive Carrier* test.

The *SFNPRM* proposes (at ¶153) to allow a LEC to be regulated as nondominant with respect to a particular service or geographic market. GTE strongly supports this proposal. GTE also urges the Commission to take the following steps in this proceeding. First, the Commission should determine that a LEC will be considered nondominant in any new geographic market it may enter outside its traditional serving area. Second, the Commission should develop criteria for nondominance recognizing that nondominant treatment would complete the Commission's "three-part framework for our adaptive price cap regulation."⁹⁵ This would establish clear ground rules for LECs to follow when they seek nondominance in particular markets. It would also reduce uncertainty for both the LECs and their competitors as to how regulation will be reduced as competition develops. Finally, by simplifying and regularizing the process as much as possible, a clear framework will reduce the administrative burden on the Commission.

A. The Commission should adopt a framework which is an extension of that developed for streamlining.

GTE proposes that the framework for assessing nondominance should be based upon the framework outlined *supra* for streamlining. The underlying economic analysis is the same; the difference is one of degree.

⁹⁵

SFNPRM at ¶152.

Specifically, GTE proposes that the same dimensions used to define a relevant market for streamlining should also be used for nondominance. A LEC would be able to propose nondominant treatment for one or more of these markets. Careful market definition is crucial as the Commission extends its consideration of nondominance below the firm level.⁹⁶

The criteria for the determination of nondominance should similarly be based upon those used for streamlining. These criteria are consistent with those developed in the *Competitive Carrier* proceeding and rely on indicators which are simple to measure, and for which clear thresholds can be defined. This will reduce uncertainty for the LEC, and ease administration for the Commission.

GTE proposes that the same addressability construct that is developed for streamlining should also be used for nondominance. However, the threshold should be set at a higher level. If the market for which the LEC is seeking nondominant treatment has already been streamlined, then the LEC already will have demonstrated that customers in that market accept available alternatives as substitutes for the LEC's services. It should not be necessary to repeat this portion of the showing.

If the LEC is seeking nondominant status for services provided to small customers, it should also be required to show that barriers to entry for local

⁹⁶ For example, control of bottleneck facilities has been one of the criteria used under the *Competitive Carrier* criteria to determine whether a firm is nondominant. However, control of facilities in one relevant market will not necessarily confer market power in another relevant market.

exchange markets have been removed in the relevant geographic area. This should be done by showing that the LEC has met the requirements established by the state commission to govern local competition. Local exchange markets are regulated today by the states; many state commissions are currently developing policies with respect to local competition. The Commission should not duplicate these efforts, but should require the LEC to comply with requirements established by the state as a condition for nondominance.

This requirement should not apply if the LEC seeks nondominant status only for services provided to large customers. As discussed *supra*, for large customers, the choice of an access provider is separable from the choice of a local dial tone provider. Access providers are able to enter a geographic market and provide interstate access services which are substitutable for LEC access services, without offering local exchange service.⁹⁷ Therefore, the issue of barriers to entry into local exchange service should not be relevant in markets where the customers are large.

B. In markets where they have been found to be nondominant, LECs should be treated the same as other nondominant carriers.

The *SFNPRM* (at ¶153) proposes to allow LECs under nondominant treatment to file tariffs on one day's notice, without cost support. GTE supports

⁹⁷ See USTA's Comments in the instant proceeding, Attachment 2 for an extensive list of cities where access competitors are providing service. Most of these firms have entered the market as access providers, not as local exchange carriers.

this proposal. However, GTE emphasizes that the treatment of nondominant carriers should be symmetric. A LEC found to be nondominant in a given market should be regulated in the same manner as any other nondominant carrier with which it must compete in that market. In addition to allowing tariffs on one day's notice, the Commission has minimized its regulation of nondominant carriers in other ways. For example, nondominant carriers are not required to file domestic 214 applications.⁹⁸ This should also apply to LECs when providing services found to be nondominant.

Further, the Commission may modify its regulation of nondominant carriers over time.⁹⁹ As the regulation of nondominant carriers evolves, the Commission should ensure that all nondominant carriers -- including LECs -- are treated symmetrically.

CONCLUSION

For the foregoing reasons, GTE strongly supports the Commission's efforts in this proceeding and urges the Commission to act expeditiously in resolving the issues addressed in the *Second Notice*. It is essential for the Commission to eliminate restrictions in the current rules impairing the LECs' ability to introduce new service offerings and to develop the criteria that will determine when the

⁹⁸ There may be some issues to be addressed in applying some of these measures to a carrier only in a particular market, rather than to the firm as a whole.

⁹⁹ For example, the Commission has announced its intention to begin a proceeding to specify the regulatory treatment it will afford nondominant interexchange carriers.

market is ready for streamlined regulation and nondominant reclassification of the price cap LECs.

Respectfully submitted,

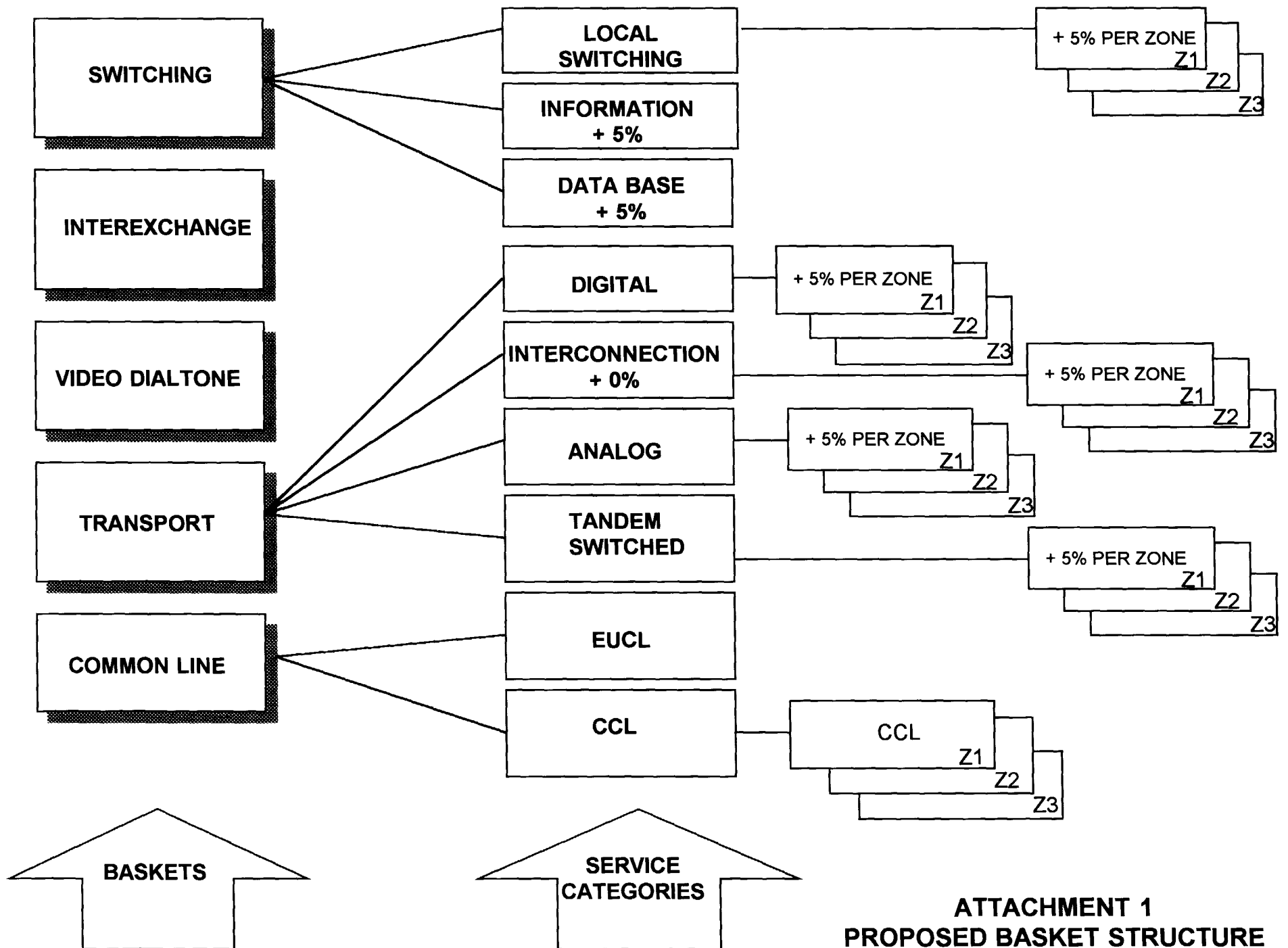
GTE Service Corporation, on
behalf of its affiliated domestic
telephone operating companies

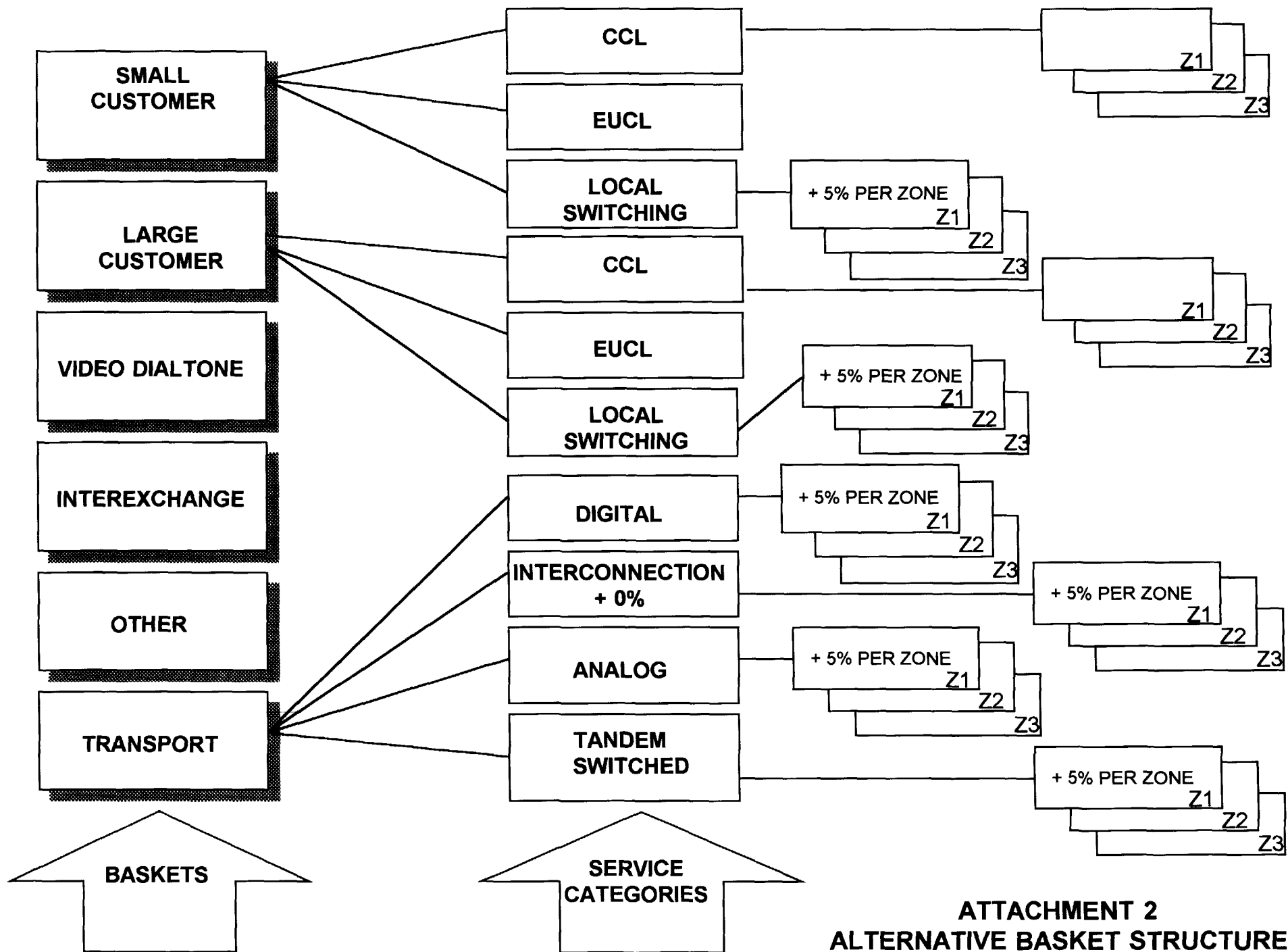
A handwritten signature in black ink, appearing to read "Gail Polivy", written over a horizontal line.

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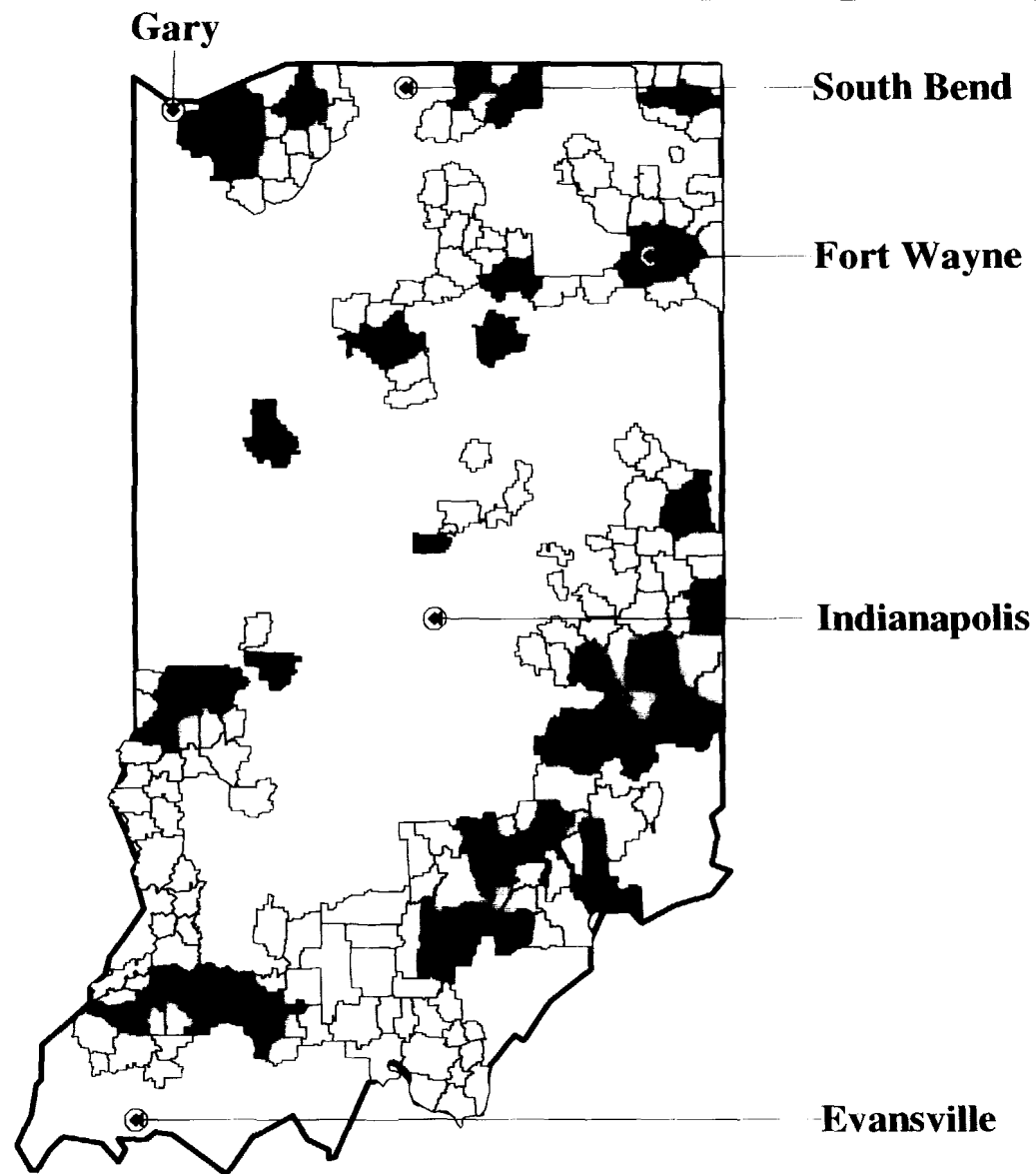




INDIANA

Zone Offices

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I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Comments of GTE" have been mailed by first class United States mail, postage prepaid, on the 11th day of December, 1995 to all parties on the attached list.


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